No. 04-259

Supreme Court, U.S.
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In the Supreme Court of the United States

ILLINOIS, PETITIONER,

v.

WILLIAM A. MILLER, RESPONDENT.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Respondent's brief in opposition rests upon two patently incorrect propositions. With respect to the first question presented, respondent contends that *Ohio v. Robinette*, 519 U.S. 33 (1996), and *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), are distinguishable because, unlike the officers in those cases, the officer here had no "objective justification" for ordering respondent out of his car. Opp. 6. But *Robinette* and *Mimms* make clear that the *only* objective justification necessary for ordering a driver out of his car is "probable cause to stop" the driver for a traffic offense. *Robinette*, 519 U.S. at 38-39 (citing *Mimms*, 434 U.S. at 111 n.6). That justification was undeniably present here. Accordingly, the decision below is directly contrary to *Robinette* and *Mimms* — indeed, the Illinois Appellate Court did not even bother to acknowledge, let alone distinguish, either of those precedents.

With respect to the second question presented, respondent denies that the Illinois Appellate Court applied *Terry* principles to evaluate the Fourth Amendment validity of the officer's order that respondent exit his car. Opp. 7, 10. Respondent's denial is preposterous. See Pet. App. 8a-11a (applying two-pronged *Terry* analysis to officer's conduct). Thus, the Illinois court's application of *Terry* directly implicates the deep and intractable conflict over whether *Terry* principles govern police conduct during a probable cause-based traffic stop.

A. As shown in the petition, the Illinois Appellate Court effectively held that the rule set forth in *Mimms* and applied in *Robinette* — that an officer may order the driver out of his car during a traffic stop — does not apply near the conclusion of the stop. Pet. 4-5, 7. Respondent does not adopt this view of the *Mimms* rule, and does not deny that such a view conflicts

with the decisions of other lower courts. See Pet. 8-9. Instead, respondent argues that the decision below is consistent with this Court's understanding of the *Mimms* rule. Opp. 5-6.

Respondent is incorrect, for the Illinois Appellate Court's decision reaches the opposite result as *Robinette* on materially identical facts. In both this case and *Robinette*, the officer stopped the driver for traffic violations and decided to issue a warning rather than a ticket. See *Robinette*, 519 U.S. at 35; Pet. App. 3a-4a. In both cases, before issuing the warning, the officer asked the driver to exit the car. See *Robinette*, 519 U.S. at 35; Pet. App. 6a. In both cases, the driver argued that the officer ordered him to exit the car, not for any reason related to safety or the traffic violation, but to determine whether he was committing an unrelated crime. See *Robinette*, 519 U.S. at 37-38; Pet. App. 4a, 10a-11a. And in both cases, the state court held that the officer's order violated the Fourth Amendment because there were no "articulable facts" to suggest that the driver was indeed committing an unrelated crime. *State v. Robinette*, 73 Ohio St. 3d 650, 650, 653 N.E.2d 695, 696 (1995); Pet. App. 10a-11a.

This Court reversed in *Robinette*. Citing *Whren v. United States*, 517 U.S. 806 (1996), the Court noted that "the subjective intentions of the officer did not make the continued detention of [the driver] illegal under the Fourth Amendment." *Robinette*, 519 U.S. at 38. The Court added:

> As we made clear in *Whren*, the fact that [an] officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.

Ibid. (internal quotations omitted). Given these principles, and in light of the *Mimms* rule, the Court concluded that "there is no

question that, in light of the admitted probable cause to stop [the driver] for speeding, [the officer] was objectively justified in asking [the driver] to get out of the car, subjective thoughts notwithstanding." *Ibid.* (citing *Mimms*, 434 U.S. at 111 n.6).

Like the defendant in *Robinette*, respondent argues here that the officer ordered him out of his car to question him about unrelated crimes, not for reasons related to safety or his traffic offense. Opp. 5-6. But *Robinette* holds in no uncertain terms that an officer need not have safety concerns in mind to justify ordering the driver out of his car. As long as an officer has "probable cause to stop" the driver for observed traffic violations — and such probable cause was indisputably present here, see Pet. App. 8a-9a — the officer has the objective justification necessary to order the driver to exit his car, "subjective thoughts notwithstanding." *Robinette*, 519 U.S. at 38. This is so even where the officer's subjective motivation is to investigate a crime unrelated the traffic offense itself. *Ibid.* To hold otherwise would violate the categorical rule that "a police officer may *as a matter of course* order the driver of a lawfully stopped car to exit his vehicle." *Maryland v. Wilson*, 519 U.S. 408, 410 (1997) (citing *Mimms*) (emphasis added).[1]

The decision below is fundamentally incompatible with *Robinette* and *Mimms*. Even though the dissent below cogently explained why *Robinette* and *Mimms* governed this case and required affirmance of respondent's convictions, see Pet. App. 13a-15a (Turner, J., dissenting), the majority failed to even acknowledge those precedents. Given the Illinois court's patent

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[1] Respondent repeatedly suggests that the officer ordered respondent out of his car "after" the traffic stop. Opp. 3, 4, 5, 6. That is incorrect, as the officer still had not issued a warning at the time he ordered respondent to exit his car. Pet. App. 6a (describing videotape of the encounter). That is precisely what transpired in *Robinette*. See 519 U.S. at 35.

disregard for *Mimms* and *Robinette*, certiorari should be granted, and summary reversal might be appropriate. See, *e.g.*, *Smith v. Texas*, 543 U.S. ___ (2004) (per curiam) (summary reversal where decision below plainly inconsistent with *Penry v. Johnson*, 532 U.S. 782 (2004)); *Illinois v. Fisher*, 540 U.S. 544 (2004) (per curiam) (same where decision below foreclosed by *Arizona v. Youngblood*, 488 U.S. 51 (1988)).

B. As shown in the petition, the decision below deepens an existing conflict over whether *Terry* principles govern police conduct during a traffic stop justified by probable cause. Pet. 9-16. Respondent does not deny that this conflict exists (Pet. 10-14), that the conflict leads different courts to reach inconsistent results under materially identical circumstances (Pet. 15), or that the standard governing police action during probable cause-based stops is an issue that recurs with great frequency (Pet. 16). Rather, respondent argues that this case does not implicate the conflict because, he says, the Illinois Appellate Court "did not hold that *Terry* principles govern the Fourth Amendment validity of police conduct at traffic stops." Opp. 10.

Respondent is flatly wrong. The Illinois Appellate Court plainly applied *Terry* principles in holding that the officer violated the Fourth Amendment by ordering respondent to exit his car. Pet. App. 8a ("Because a traffic stop is more analogous to a *Terry* investigative stop * * * than to a formal arrest, the reasonableness of a traffic stop is analyzed under *Terry* principles.") (internal quotations and citation omitted); *id.* 8a (the officer did not violate "the first prong of *Terry*"); *id.* 9a, 11a (the officer violated "the second prong of the *Terry* analysis" because "[h]is request for defendant to exit the car was [made] without articulable facts justifying a *Terry* investigative seizure"). Accord, *People v. Gonzalez*, 204 Ill. 2d 220, 228, 789 N.E.2d 260, 266 (2003) (declining to "distinguish between those cases in which the traffic stop is based on

Terry's 'articulable suspicion' and those cases in which the traffic stop is supported by probable cause," and holding that "*Terry* principles apply even in the presence of probable cause"). Thus, this case directly implicates the conflict among the lower courts over whether *Terry* principles govern the Fourth Amendment validity of police conduct at traffic stops justified by probable cause.

CONCLUSION

The petition for a writ of certiorari should be granted. The Court may wish to consider summary reversal on the first question presented, or to hold the petition pending resolution on the merits of *Illinois v. Caballes*, No. 03-923, or *Muehler v. Mena*, No. 03-1423, which may address issues closely related to the second question presented.

Respectfully submitted.

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